

HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b))

Description of the case.

W.P. No. 285 (M/S) / 2004

Bihari Lal and another

Versus.

State and others.

Approved for reporting.

~~Not approved for reporting~~

Date of decision 16.4.2004.

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 285 (M/S) of 2004

1. Behari Lal

2. Hardwari lal

Both sons of Ram Sahay

R/o Gram Mazahidpur Sattiwala

P.O. Sikhroda Tehsil Roorkee

Distt. Haridwar.

.....Petitioners

Vs.

State of Uttaranchal

And others

....Respondents

Counsel for the petitioner Sh. Abdul Wahid

And Sh. Brij Bhusan Sharma

Sh. Nanak Chand Gupta for respondent

No. 1,2,3.

Dated: 16.4.2004

Hon'ble Rajesh Tandon, J.

Heard Sh. Abdul Wahid and Sh. Brij Bhusan Sharma learned counsel for the petitioners and Standing Counsel for the respondents.

By the present writ petition the petitioners have prayed for the issue of a writ, order or direction in the nature of certiorari quashing the order dt. 3-10-98 passed by respondent No. 2 i.e. S.D.M. Roorkee.

Brief facts giving rise to the present writ petition are that the petitioners are the permanent residents of village Mazahidpur Sattiwala, O.P. Sikroda, Pargana- Bhagwanpur, Distt Haridwar and

belong to Scheduled Caste i.e. the petitioners are Chammar by Caste. The petitioners are the owners of bearing Khata Khatauni No. 147 situated at Gram Mazahidpur Satiwala, O.P Sikhroda, Pargana Bhagwanpur, Distt. Hardwar. The above agricultural land bearing Khata Khatauni No. 147 of the Phasli Year 1402 to 1406 situated at village Muzhidpur is in the real and actual possession of the petitioners. The petitioners are ploughing the above agricultural land bearing Khata Khatauni No. 147 Fasli year 1402 to 1406 and the Agriculture Crop is standing on this disputed land, which was auctioned by Naib Tehsildar on the orders of the Tehsildar/S.D.M, Roorkee on 3-10-98 for only nominal amount of Rs. 1/- by Auction Officer, Naib Tehsildar, Roorkee, and which was taken in bid by Smt. Maharani Begum . The so-called auction money of Rs. 1/- was deposited in the register no. 4 of Naib Nazeer and the receipt was issued.

According to the petitioners above land bearing Khata Khatauni No. 147 situated at Muzahidpur Satiwala, P.S. Bhagwanpur, Roorkee was auctioned by the Naib Tehsildar on the order passed by the Tehsildar/S.D.M Roorkee dt. 3-10-98 for only a nominal amount of Rs. 1/- and the above land was entered in the name of Gram Sabha Mazahidpur Sattiwala Pargana Bhagwanpur, Distt. Haridwar contrary to the provisions of U.P.Z.A.L.R Act.

The grievance of the petitioners is that the land belonging to the S.C. and S.T cannot be auctioned by the Assistant Collector and the land is protected under Section 122B (4)(f) of the U.P.Z.A.L.R Act, and no notice was given to the petitioners.

The petitioners have filed the objections before the S.D.M Roorkee against the illegal auction of land bearing Khata Khatauni No. 147, but the S.D.M Roorkee Haridwar, did not cancel the auction

proceedings. The petitioners has also field an application before District Magistrate for giving a direction to the S.D.M Roorkee.

Rule 285 I of the Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 provides as under:-

285 I (i) *At any time within thirty days from the date of the sale, application may be made to the Commissioner to set aside the sale on the ground of some material irregularity or mistake in publishing or conducting it; but no sale shall be set aside on such ground unless the applicant proves to the satisfaction of the Commissioner that he has sustained substantial injury by reason of such irregularity or mistake.*

(ii) The order of the Commissioner passed under this rule shall be final.

From the entire record of the case it is evident that the application for setting aside the order has to be filed before the commissioner. In view of the aforesaid if such an application is field, the commissioner shall decide the same in accordance with 285 I of the U.P.Z.A.L.R Act.

Therefore, liberty is given to the petitioners to approach the commissioner for appropriate relief by filing Appeal/Application under Section 285 I of the U.P.Z.A.L.R Act, who shall dispose of the same in accordance with law.

Subject to the aforesaid observations, the writ petition is disposed of on the ground of alternative remedy.

(Rajesh Tandon J.)

Dated:- 16.04.2004

M.K